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IN THE

Supreme Court of the United States

October Term, 1968
No. 1167

ATHALIE IRVINE SMITH,

Petitioner,

vs.

THE JAMES IRVINE FOUNDATION, a corporation, *et al.*,

Respondents.

On Petition for a Writ of Ceritorari to the United States Court of Appeals for the Ninth Circuit.

Brief of Respondents The James Irvine Foundation, Et al., in Opposition.

This case involves an *inter vivos* trust for charitable purposes established under the laws of the State of California in the year 1937 by a written Indenture of Trust between James Irvine, as trustor, and respondent The James Irvine Foundation, as trustee. The Foundation administered the trust for almost three decedes before this action was filed in August, 1966. During that period, approximately 6.5 million dollars of trust income was distributed to California charities in accordance with the provisions of the Indenture of Trust. The petitioner (plaintiff and appellant below) is a granddaughter of the trustor and seeks by this action to invalidate the trust and to recover the trust property, which consists of a majority of the stock of The Irvine Company, for herself and the other beneficiaries of the trustor's estate.

Jurisdictional Statement.

The United States District Court for the Central District of California had jurisdiction in this cause under the provisions of 28 U.S.C. § 1332 by virtue of an Amended Complaint for the recovery of personal property exceeding the value of $10,000.00, exclusive of interest and costs, which shows diversity of citizenship between petitioner and respondents [Clk. Tr. p. 4]. A final judgment in favor of respondents and against petitioner was entered in the District Court on December 18, 1967 (277 F. Supp. 774; Pet. App. B, p. 48).

Jurisdiction was conferred on the United States Court of Appeals for the Ninth Circuit under the provisions of 28 U.S.C. § 1291 by virtue of a Notice of Appeal filed on behalf of petitioner on December 18, 1967 [Clk. Tr. p. 187]. The judgment of the Court of Appeals, which affirmed the District Court's judgment, was filed and entered October 14, 1968 (402 F. 2d 772; Pet. App. A, A1, pp. 40, 45). Petitioner's application for a rehearing was denied December 18, 1968 (Pet. App. A2, A3, pp. 46-47).

The Petition for a Writ of Certiorari was filed March 18, 1969. It invokes the jurisdiction of this Court under the provisions of 28 U.S.C. § 1254(1).

Defects and Deficiencies of Petition.

Preliminarily, it should be noted that the Petition fails to conform to the requirements of the Rules of this Court in the following important respects:

1. The Petition does not, and indeed could not, set forth "special and important" reasons as specified in

Rule 19 for a review of the decision of the Court of Appeals by this Court. No question of federal law and no important question of state law was decided by the Court of Appeals; nor is its judgment in conflict with a decision of this Court or of another Court of Appeals. The California law applicable to the issues in the case is well settled by numerous prior decisions of the state appellate courts and was clearly followed in deciding each of petitioner's contentions. Moreover, there is nothing new, special or important (except to the parties) about any of the issues. They involve, in the main, rather ordinary questions of fact which were decided by the District Court in the usual course of judicial proceedings. The full record was reviewed in the Court of Appeals and the findings were affirmed by a routine application of well established principles of judicial review under the provisions of Rule 52(a) of the Federal Rules of Civil Procedure. The issues decided by the Court of Appeals have no application beyond this case and present no reason for an exercise of this Court's jurisdiction.

2. The Petition fails to present accurately or clearly the facts essential to a ready and adequate understanding of the points submitted for consideration as required by paragraph 4. of Rule 23. The Petition reiterates the twice rejected arguments and contentions asserted on behalf of petitioner in the lower courts and omits the material evidence and findings of fact. Moreover, petitioner's arguments that the findings of the courts below are "clearly erroneous" (Pet. pp. 9-39) are not presented in terms of the evidence as a whole, but are based upon inaccurate characterizations and erroneous inferences drawn from selected bits of testi-

mony and fragments of various documents without reference to the great mass of substantial evidence in the record on which the District Court and the Court of Appeals made their findings.

3. It is apparent that the Petition fails to conform to the requirements of subparagraphs (c) and (e) of paragraph 1. of Rule 23 with respect to the statement of the questions presented for review and the statement of the case.

The foregoing defects and deficiencies of the Petition should constitute, without more, a sufficient reason for denial of the requested Writ of Certiorari.

Questions Presented.

For the reasons explained above, the questions stated in the Petition are inaccurate and misleading. The only questions actually presented by the Petition are the following:

1. Whether the Court of Appeals erred in denying petitioner's application for a rehearing, in which petitioner contended that the District Court failed to order the joinder of an indispensable party to the action under the provisions of Rule 19 of the Federal Rules of Civil Procedure.

2. Whether the Court of Appeals erred in holding that the forty-one findings of facts challenged by petitioner on appeal are not "erroneous—clearly or otherwise."

3. Whether the Court of Appeals erred in holding that the California law was correctly applied in the District Court's finding that the subject trust is limited to solely charitable uses and purposes and therefore is exempt from the California rule against perpetuities.

Statement of the Case.

The thoroughness and accuracy with which the evidence is presented in the District Court's Memorandum opinion (Pet. App. B, pp. 48-111) make it unnecessary to include a detailed review of the facts in this statement of the case. However, the following summary is submitted to correct the inaccuracies and misleading omissions in petitioner's statement and to assist the Court in identifying the various parties and transactions and their relationship to one another.

Descendants of James Irvine—Parties to the Action.

James Irvine (referred to herein as Mr. Irvine) was born in 1867 and died in 1947. When Mr. Irvine died, his only surviving child was Myford Irvine. He was also survived by his wife Katharine Brown Irvine and by three granddaughters; Athalie Anita Smith (petitioner herein), the only child of his predeceased son James, Jr.; Kate L. Wheeler (a respondent herein), the only child of his predeceased daughter Kathryn Helena; and Linda Irvine Gaede (a respondent herein), the then only child of his surviving son Myford. Katharine Brown Irvine and Myford Irvine having died prior to

the commencement of this case in 1966, the executors of their respective estates were joined in the action as parties defendant.

The District Court found that all of the persons having an interest in Mr. Irvine's estate had been joined as parties to the action (Pet. App. B, p. 56). Petitioner did not challenge this finding on her appeal to the Court of Appeals. However, the absence of an indispensable party was one of the grounds urged by petitioner for a rehearing in the Court of Appeals. Petitioner contended there, as she does here, that James Myford Irvine is an heir at law of Mr. Irvine's estate and should have been joined in the action.

James Myford Irvine is the son of Myford Irvine, deceased, and Gloria Wood Irvine (a respondent herein as one of the executors and trustees of Myford Irvine's estate). He was not born until six years after Mr. Irvine's death and therefore, could not be one of Mr. Irvine's heirs at law. The Petition also erroneously states that James Myford Irvine is a testamentary beneficiary of Mr. Irvine's estate (Pet. p. 6). No provision is made for him in Mr. Irvine's last Will [Ex. B] or in the Decree of Final Distribution entered in Mr. Irvine's estate by the California probate court [Ex. B-28]. Accordingly, James Myford Irvine has no interest in Mr. Irvine's estate and petitioner's application for a rehearing in the Court of Appeals was denied.

The James Irvine Foundation—The Charitable Trust.

The James Irvine Foundation is a California corporation. It was organized by Mr. Irvine for charitable purposes under the California non-profit corporation laws in the year 1937. Its Articles of Incorporation

which were filed on January 6, 1937, provide *inter alia:*

> "That this corporation, is formed solely for charitable purposes, namely, public welfare, health, education, comfort, happiness and general well being, particularly of the citizens and residents of the State of California, or any part thereof, and that this is a corporation which does not contemplate pecuniary gain or profit to the members thereof. . . ." [Ex. A].

There were seven members and directors of the Foundation, of which only two were members of Mr. Irvine's family: his son Myford Irvine and his wife Katharine Brown Irvine. At the first meeting of directors held on February 1, 1937, Myford Irvine was elected president, Paul A. Dinsmore was elected vice-president and E. M. Price was elected secretary and treasurer [Ex. A-14, pp. 24-25]. Mr. Irvine was never a member, director, or officer of the Foundation [Rep. Tr. p. 78].

By an Indenture of Trust dated February 24, 1937, and executed by Mr. Irvine, as trustor, and by Myford Irvine and E. M. Price on behalf of the Foundation, as trustee, Mr. Irvine transferred, assigned and conveyed to the Foundation 505 shares of the capital stock of The Irvine Company, together with certain other stock and stock interests to be held in trust for charitable uses and purposes. Under the terms of the Indenture, Mr. Irvine reserved to himself a life estate interest in the stock transferred to the Foundation, including the right to receive the dividends and certain capital distributions and the right to vote the stock during his lifetime. He also retained the power to add

other property to the corpus of the trust and to revoke the trust in whole or in part or to withdraw from the trust all or any part of the trust property "by written instrument filed with the Trustee" [Ex. A-1].

At the next regular meeting of directors of the Foundation held on May 25, 1937, a resolution was adopted, which "ratified, approved, confirmed and adopted" the "acts and deeds of Myford Irvine as President and E. M. Price as Secretary . . . in executing for and in behalf of . . . this corporation, that certain Indenture of Trust . . . and in accepting the trusteeship created by and under said Indenture of Trust and also in *accepting delivery for and in behalf of this corporation as trustee under said Indenture of Trust, of the certificates of stock described in said Indenture of Trust, to-wit 505 shares of the capital stock of The Irvine Company* . . ." (Emphasis added). The resolution also provided that the "corporation does hereby expressly accept said trusteeship and acknowledges and declares *that it holds said shares of stock and the certificates evidencing same, respectively* . . . as Trustee under said Indenture of Trust and subject to all the rights and obligations of Trustee thereunder." (Emphasis added) [Ex. A-14, p. 31].

By letter dated June 20, 1946, Mr. Irvine exercising the powers reserved to him in the 1937 Indenture of Trust, transferred an additional five shares of stock of The Irvine Company to the Foundation as an addition to the corpus of the trust [Ex. A-13]. At the regular meeting of directors of the Foundation held on June 26, 1946, a resolution was adopted accepting "said five shares of stock of The Irvine Company . . . as an addition to the trust property." [Ex. A-14, p. 109].

Mr. Irvine's life estate interest in the trust property terminated by his death on August 24, 1947. A special meeting of directors of the Foundation was held on September 19, 1947, at which the following resolution was adopted:

> "RESOLVED, that the President and Secretary of this corporation be and they hereby are authorized and directed to take all steps and to do and perform all things, for and on behalf of this corporation, that may be necessary to cause the certificates of the capital stock of The Irvine Company, heretofore transferred to and now held by this corporation, to be transferred on the books of The Irvine Company and new certificates representing such shares to be issued in the name of this corporation." [Ex. A-14, p. 121].

On November 18, 1947, said 510 shares of stock of The Irvine Company were transferred on the books of the Company from the name of James Irvine to The James Irvine Foundation and a new certificate for the stock was issued to the Foundation [Rep. Tr. pp. 79-80].

In 1963, The Irvine Company redeemed 10% of its outstanding stock in a partial liquidation, leaving the Foundation with a total of 459 shares [Ex. D]. These are the shares which are the subject of petitioner's action.

Proceedings in the Courts Below.

All of petitioner's contentions of fact and legal theories were fully tried and examined in the District Court. Almost 4000 pages of oral testimony was taken, 297 documents were received in evidence and extended post trial briefs of fact and law were filed on behalf

of petitioner and the respondents. The evidence and petitioner's contentions as to the facts are reviewed in considerable detail, together with the applicable California authorities, in the District Court's Memorandum opinion, which also sets forth its findings of fact, conclusions of law and order for judgment (277 F. Supp. 774 (1967); Pet. App. B, p. 48).

In summary, the District Court found:

1. That the executed Indenture of Trust and Mr. Irvine's letter of June 20, 1946, were delivered to the Foundation by Mr. Irvine and thereafter retained by the Foundation;

2. That the delivery of the Indenture of Trust and June 20, 1946 letter effected a present transfer of the subject 510 shares of Irvine Company stock in trust to the Foundation, subject only to being divested by the exercise by Mr. Irvine of his power of revocation;

3. That following execution of the Indenture of Trust and June 20, 1946 letter, Mr. Irvine endorsed in blank the certificates described in those instruments and delivered them to the Foundation and that thereafter during the lifetime of Mr. Irvine the Foundation had in its possession certificates endorsed in blank representing the subject 510 shares of Irvine Company stock;

4. That the delivery of the certificates endorsed in blank effected a present transfer of the subject 510 shares of Irvine Company stock to the Foundation in trust subject only to being divested by the exercise by Mr. Irvine of his power of revocation;

5. That the Indenture of Trust established a valid *inter vivos* trust and not a mere agency and that the

Indenture and Mr. Irvine's June 20, 1946 letter effected an *in praesenti* transfer of the subject stock, which was not testamentary in character; and

6. That the trust established by the Indenture is limited to solely charitable uses and purposes and is valid under the California law exempting charitable trusts from the rule against perpetuities.

Petitioner challenged the findings on appeal and the Court of Appeals "after thoroughly examining the voluminous record" and having "carefully reviewed the decision in the full light of [petitioner's] vigorous and broadly-based assault upon it" found no error and affirmed the decision of the District Court (402 F. 2d 772, 774; Pet. App. A, pp. 42-43).

ARGUMENT.

I.

The Decision That James Myford Irvine Is Not an Indispensable Party Raises No Special or Important Question and Is Correct.

Petitioner bases her contention that James Myford Irvine is an indispensable party on the undocumented assertion that he is an heir at law of Mr. Irvine and a testamentary beneficary of his estate. It is clear from the record, however, that he occupies neither capacity and that in his own right he has no interest in Mr. Irvine's estate.

James Myford Irvine is not and could not have been an heir at law of Mr. Irvine because he was not born until 1953 which was six years after the death of Mr. Irvine. Under California law, the heirs at law of a decedent, that is the persons entitled to succeed to property that passes by intestate succession, are fixed and determined as of the date of the decedent's death and the title to such property vests in the heirs *eo instante* at the time of the death. Calif. Probate Code § 300; *United States F & G Co. v. Matthews,* 207 Cal. 556, 279 Pac. 655 (1929); *Estate of Liddle,* 162 Cal. App. 2d 7, 328 P. 2d 35 (1958); *Estate of Prior,* 111 Cal. App. 2d 464, 244 P. 2d 697 (1952).

James Myford Irvine is the son of Myford Irvine and respondent Gloria Wood Irvine. If Mr. Irvine had owned any property that was not disposed of by his will (which is not possible in any event as will appear

hereinafter), the title to such property under the California laws of intestate succession would have vested in Myford Irvine, his only surviving child, and by right of representation, in respondent Kate L. Wheeler and the petitioner, who were the only then living issue of his two predeceased children. Calif. Probate Code §§ 200-231; *Kunakoff v. Woods,* 166 Cal. App. 2d 59, 332 P. 2d 773 (1958).

It is equally certain that James Myford Irvine is not a testamentary beneficiary of Mr. Irvine's estate. Mr. Irvine's Last Will and Testament [Ex. B] and the Decree of Final Distribution [Ex. B-28] entered in his estate by the California probate court, clearly establish that James Myford Irvine has no interest in any property right which Mr. Irvine may have had at the time of his death. In accordance with the provisions of the Will, the Decree of Final Distribution transferred all of the property, known and unknown, which Mr. Irvine was entitled to dispose of at the time of his death, to persons other than James Myford Irvine. The Decree, after distribution of the known property, ordered that "any other property not now known or discovered which may belong to said estate of decedent or in which said estate may have an interest" be distributed one-eighth to Myford Irvine and seven-eights to the trustees of trusts established by the Will for the benefit of persons other than James Myford Irvine. The Decree having become final is conclusive as to the rights of all heirs, devisees and legatees and is not subject to collateral attack in this case. Calif. Probate Code § 1021; *Cook v. Cook,* 17 Cal. 2d 639, 652, 111 P. 2d 322, 330 (1941).

If for any of the reasons alleged in petitioner's Amended Complaint, Mr. Irvine's gifts of stock to the

Foundation in trust had been invalid, the stock would have been the property of Mr. Irvine at the time of his death. In that event the stock would have passed under the quoted provision of the Decree of Final Distribution: seven-eighths to the testamentary trusts and one-eighth to Myford Irvine. *Estate of Heigho,* 186 Cal. App. 2d 360, 9 Cal. Rptr. 196 (1960); *Latta v. Western Inv. Co.,* 173 F. 2d 99 (9th Cir. 1949).

The only interest that James Myford Irvine could have in this case is as an heir or beneficiary of the Will of Myford Irvine, who died in 1959. However, by statute in California, the estate of Myford Irvine, rather than James Myford Irvine as an individual beneficiary of the estate, is the proper party to represent and recover any property interest that could have passed to Myford Irvine as a beneficiary of Mr. Irvine's estate. Calif. Probate Code § 1023; *Holland v. McCarthy,* 177 Cal. 507, 509, 171 Pac. 421, 422-23 (1918); *Rogers v. Bank of America,* 140 Cal. App. 2d 228, 294 P. 2d 959 (1956). The estate of Myford Irvine was made a party to this action on motion of the Foundation, by the joinder of Gloria Wood Irvine and Security Pacific National Bank as the executors and trustees of the estate.

Petitioner correctly notes that Myford Irvine's daughter, respondent Linda Irvine Gaede, was also joined in the action on the motion of the Foundation, but erroneously concludes that her joinder was as an heir at law of James Irvine. To the contrary, she was joined and is a proper party to the action because she, unlike James Myford Irvine, is one of the beneficiaries of the residue of Mr. Irvine's estate under the terms of his will.

II.

The Decision That the District Court's Findings of Fact Are Not Erroneous Raises No Special or Important Question and Is Correct.

It is apparent from the opinion of the Court of Appeals that it correctly applied the ordinary and well settled rules applicable to judicial review of findings of fact under the provisions of Rule 52(a) of the Federal Rules of Civil Procedure. Petitioner's assertion that the Court of Appeals' decision is in conflict with the decision of this Court in *United States v. United States Gypsum Co.*, 333 U.S. 364, 68 S. Ct. 525 (1948), is, of course, not true (Pet. pp. 36-37). The Court of Appeals quoted and applied the rule of the *Gypsum* case in reaching its decision that the findings of fact in this case are not erroneous. In the words of the opinion of the Court of Appeals:

> ". . . [A] finding is clearly erroneous 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948).
>
> * * * *
>
> "In our view, appellant has failed to carry her burden in this respect, for after considering her assertions and after thoroughly examining the voluminous record in this appeal, we are far from a 'definite and firm conviction that a mistake has been committed.' To the contrary, we are not in the slightest convinced that the district court's findings are erroneous—clearly or otherwise; consequently, those findings will not be disturbed." (402 F. 2d 772, 774; Pet. A, pp. 42-43).

Petitioner's argument that the District Court's findings are clearly erroneous is, in substance, that the limited portions of the evidence upon which she relies are entitled to greater weight than the evidence that was accepted by the District Court in making its findings. There is no merit in petitioner's argument, as is set forth in detail in the Memorandum opinion of the District Court, but it is sufficient here to note that the argument cannot aid the petitioner in her contention that the findings are "clearly erroneous". When confronted with a similar argument in *United States v. Yellow Cab Co.*, 338 U.S. 338, 342, 70 S. Ct. 177, 179, (1949), this Court held:

> ". . . [T]he [appellant] has failed to establish any greater grievance here than it might have in any case where the evidence would support a conclusion either way but where the trial court has decided it to weigh more heavily for the defendants. *Such a choice between two permissible views of the weight of evidence is not 'clearly erroneous'.*" (Emphasis added).

No attempt has been made by petitioner to evaluate the District Court's findings in terms of the evidence as a whole or to consider the evidence in the light that is most favorable to the prevailing parties. To the contrary, petitioner has ignored most of the material evidence. Her contention that consistent findings of two lower courts should be reviewed by this Court is based upon selected bits of testimony and fragments of various documents which, at the most, show that there was a conflict in the evidence. It is too clear for argument that petitioner's burden in this Court cannot be sustained by such a showing. *Berenyi v. District Director, Imm.*

& Nat. Serv., 385 U.S. 630, 635-636, 87 S. Ct. 666, 670 (1967); *United States v. O'Donnell*, 303 U.S. 501, 508, 58 S. Ct. 708, 713 (1938).

III.

The Decision That the Trust Is Limited to Solely Charitable Uses and Purposes and Is Exempt From the California Rule Against Perpetuities Raises No Special or Important Question and Is Correct.

The provisions of the Indenture of Trust [Ex. A-1; Pet. App. Q], as well as the Foundation's Articles of Incorporation [Ex. A], in direct and mandatory language limit the beneficiaries of the trust to charities. The Indenture provides that the proceeds of the trust property shall "be used, applied, and devoted by the trustee *exclusively* to or for the advancement of any charitable use or purpose in the State of California . . ." (Emphasis added) [Ex. A-1, p. 5; Pet. App. Q, p. 173]. Such trusts are specifically exempted by the Constitution of California from the operation of rules against perpetuities. Article XX, Sec. 9 of the Constitution of California, *Dingwell v. Seymour*, 91 Cal. App. 483, 267 Pac. 327 (1928); *Estate of Conner*, 158 Cal. App. 2d 187, 322 P. 2d 616 (1958); *Estate of McKenzie*, 227 Cal. App. 2d 167, 38 Cal. Rptr. 496 (1964).

Petitioner's assertion that under the terms of paragraphs 2, 3 and 4 of the Indenture of Trust, "it is possible that the trustee may, in its uncontrolled discretion, devote the whole or a part of the income received from the trust property . . . to private use" (Pet. p. 34), is based on patent errors of both fact and law. Neither the cited paragraphs nor any of the other provisions

of the Indenture permit the trustee to use trust income for non-charitable purposes. Paragraphs 3 and 4 simply provide the trustee with discretion with respect to the investment of the capital of the trust [Ex. A-1, pp. 6-7; Pet. App. Q, pp. 174-175]. Paragraph 2 is an ordinary accumulation provision which authorizes the trustee in its sound discretion to add income to the capital of the trust and requires that all income from such additions to capital shall be subject to the same restriction to charitable uses as the proceeds from the original capital of the trust [Ex. A-1, pp. 4-5; Pet. App. Q, p. 173]. The discretionary power to accumulate trust income, like all other powers vested in the trustee, is subordinate to the charitable purpose of the trust and must be exercised by the trustee in a manner that will further that purpose. *Pacific Home v. County of Los Angeles*, 41 Cal. 2d 844, 850, 264 P. 2d 539, 542 (1953); *House of Rest v. County of Los Angeles*, 151 Cal. App. 2d 523, 528, 312 P. 2d 392, 395 (1957).

Moreover, under California law, as elsewhere, accumulation provisions are not subject to rules against perpetuities. Rather, they are subject to judicial supervision. If the trust instrument requires accumulations that are unreasonable or if a trustee that has discretion to accumulate income does so to an unreasonable extent, the court may order the distribution of the income or otherwise restrict the amount of the accumulation.

In no event does a provision authorizing or directing the accumulation of income as an addition to the trust capital operate to invalidate the trust. In *Estate of McKenzie*, 227 Cal. App. 2d 167, 38 Cal. Rptr. 496 (1964), the California Court of Appeals so held with

the succinct statement that accumulations in charitable trusts are subject to judicial supervision and do not affect "the *existence* or the *validity* of the trust itself." (Emphasis added).

The unsupported assertion in the Petition that the accumulation provision of the Indenture of Trust renders the trust invalid under the rule against perpetuities (Pet. p. 33) is erroneous under California law even with respect to private trusts. Calif. Civil Code § 725; *In re Yates Estate,* 170 Cal. 254, 149 Pac. 555 (1915).

Petitioner's reliance on *Estate of Sutro,* 155 Cal. 727, 102 Pac. 920 (1909); *Estate of Kline,* 138 Cal. App. 514, 32 P. 2d 677 (1934); *Estate of Peabody,* 21 Cal. App. 2d 690, 70 P. 2d 249 (1937); and *Estate of Vance,* 118 Cal. App. 163, 4 P. 2d 977 (1931), to support her contention that the accumulation provision in the Indenture of Trust renders the trust invalid (Pet. pp. 34-35), is badly misplaced. Those cases do not deal with, nor even discuss, the question of accumulation of income in charitable trusts. Rather, the issue before the court in each case was whether the trustee was required by the terms of the trust instrument to limit the beneficiaries of the trust to solely charitable organizations and causes.

Here we are not concerned with that question since the provisions of the Indenture of Trust in direct and mandatory language limit the beneficiaries of the trust to charities and require that the proceeds of the trust property "be used, applied and devoted by the trustee *exclusively* to or for the advancement of any charitable use or purpose in the State of California."

Conclusion.

The decision of the Court of Appeals raises no federal question and presents no "special or important" reason for an exercise of this Court's jurisdiction. Moreover, the decision of the Court of Appeals was manifestly correct in affirming the judgment of the District Court and in denying petitioner's application for a rehearing.

We respectfully submit that the Petition For a Writ of Certiorari should be denied.

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